

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARJORIE FERRELL, et al.,

Plaintiffs,

V.

**WYETH-AYERST LABORATORIES, INC.,
et al.,**

Defendants.

Civil Action No. C-1-01-447

Judge Sandra S. Beckwith

Magistrate Judge Timothy S. Hogan

**SUPPLEMENTAL SUBMISSION IN SUPPORT OF PARTIAL DISMISSAL AND
IN OPPOSITION TO CLASS CERTIFICATION**

Defendants Wyeth and Wyeth Pharmaceuticals (collectively “Wyeth”) respectfully submit the attached supplemental recently-decided authority in support of their pending motion to dismiss and in opposition to plaintiffs’ motion for class certification.

Wyeth's pending motion to dismiss rests on four grounds: (1) the named plaintiffs lack standing to assert claims under the laws of states where they do not reside and have not purchased Premarin; (2) plaintiffs' statutory claims under the laws of Maine and Tennessee fail on the independent ground that the antitrust laws of those states do not extend to interstate conduct; (3) plaintiffs' statutory claims under Louisiana and New Jersey Law fail on the ground that the states in question do not permit recovery by indirect purchasers; and (4) plaintiffs' equitable unjust enrichment claims fail because they amount to circumvention of statutes adopted by each of the relevant states. See

Memorandum in Support of Defendants' Partial Motion to Dismiss (Docket No. 39), dated January 31, 2002.

The attached decision – Perez v. Metabolife International, Inc., ____ F.R.D. ____, 2003 WL 22255819 (S.D. Fla. Sep. 26, 2002) – provides further support for the first ground asserted for dismissal. In Perez, the Court denied class certification with respect to “medical monitoring” claims under the laws of states other than Florida where “[a]ll of the named Plaintiffs are Florida residents, and the Complaint alleges that Florida medical monitoring law would apply to all of them. Therefore, none of these Plaintiffs would have standing to raise questions of state law for states other than Florida, and the Court would not have jurisdiction to evaluate the law of those other states.” Id. at *6. Perez is applicable because the named plaintiffs in this case reside in just a few states yet ask this Court to apply the statutes of more than 20 states.

Perez is also relevant to the pending motion for class certification. See Memorandum in Opposition to Plaintiffs' Motion for Class Certification (Docket No. 57), dated July 15, 2002, at 55-56. Specifically, since the only proposed class representatives are from the states of Florida, Illinois and Minnesota, they lack standing to assert claims on behalf of putative class members under the statutes of the nearly 20 other states identified in the complaint.

Respectfully submitted,

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Dated: November 12, 2003

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been served electronically this 12th day of November, 2003 on Janet Abaray, Lopez, Hodes, Restaino, Milman, Skikos & Polos, 312 Walnut Street, Suite 2090, Cincinnati, Ohio 45202 and Joseph E. Conley, Jr., Buechel & Conley, 25 Crestview Hills Mall Road, Crestview Hills, Kentucky 41027 and by U.S. mail, postage prepaid upon the following:

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